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11 **UNITED STATES DISTRICT COURT**
12 **DISTRICT OF HAWAII**

13

14 KAREN MICHAUD and RICHARD
15 SKAFF,

16 Plaintiff,

17 v.

18 KULA LODGE AND RESTAURANT,
19 INC.; FRED ROMANCHAK and DOES
20 1 through 10, Inclusive,

21 Defendants.

CASE **CV10 00530 ACK KSC**

Civil Rights

**COMPLAINT FOR INJUNCTIVE
RELIEF AND DAMAGES: DENIAL
OF CIVIL RIGHTS OF A DISABLED
PERSON IN VIOLATION OF TITLE
III OF THE AMERICANS WITH
DISABILITIES ACT; AND HAWAII
CIVIL RIGHTS LAWS**

DEMAND FOR JURY TRIAL

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24

25 Plaintiffs, KAREN MICHAUD and RICHARD SKAFF, complain of
26 Defendants, KULA LODGE AND RESTAURANT, INC.; FRED ROMANCHAK;
27 and DOES 1 through 10, Inclusive, and alleges as follows:

28 ///

1 **INTRODUCTION:**

2 1. The Kula Lodge and Restaurant (hereinafter, “the Lodge” or
 3 “Restaurant”) is a self-proclaimed “wonderful place to meet or treat your friends,”
 4 and is one of the popular tourist locations offered to visitors to Maui as a place to see
 5 beautiful sunsets and the lush vegetation of Upcountry Maui. It is also the subject
 6 facility of Plaintiffs’ complaint. The Lodge is located in the town of Kula on the
 7 western slope of Haleakala Crater. The Kula Lodge and Restaurant offers its guests
 8 chalets for overnight stays, restaurant facilities, shops, and beautiful grounds and
 9 terraces with spectacular views of the Pacific Ocean and the West Maui mountains.
 10 Unfortunately, on information and belief many if not all of the chalets and amenities
 11 are not accessible to persons who use wheelchairs or others who have mobility
 12 disabilities due to the lack of accessible facilities and dangerous conditions, as
 13 discussed herein. On information and belief, the Kula Lodge and Restaurant has been
 14 constructed, altered, added to, and/or structurally repaired after January 26, 1992, in
 15 violation of Title III of the Americans with Disabilities Act of 1990 (“ADA”), which
 16 was enacted to protect the civil rights of disabled persons to use public
 17 accommodations in a full and equal manner.

18 2. Plaintiff KAREN MICHAUD (“Michaud” or, collectively with
 19 RICHARD SKAFF, “Plaintiffs”) is a qualified person with a physical disability who
 20 requires the use of a wheelchair for mobility, and cannot stand or walk.

21 3. Plaintiff RICHARD SKAFF (“Skaff” or, collectively with KAREN
 22 MICHAUD, “Plaintiffs”) is a qualified person with a physical disability who requires
 23 the use of a wheelchair for mobility, and cannot stand or walk.

24 4. KULA LODGE AND RESTAURANT (the “Lodge”); KULA LODGE
 25 AND RESTAURANT, INC. (the “Corporation”); FRED ROMANCHAK
 26 (“Romanchak”); and DOES 1 through 10, Inclusive (collectively “Defendants”), are
 27 the owners, operators, lessors and/or lessees of the Lodge, located at 15200 Haleakala
 28 Highway, Kula, Hawaii. Plaintiffs allege that the Lodge has been constructed, added

1 to and/or structurally repaired in violation of Title III of the ADA and its
2 implementing regulations, and Americans with Disabilities Act Accessibility
3 Guidelines (“ADAAG”) enacted to provide disabled access to persons with physical
4 disabilities in places of public accommodation. Plaintiffs allege that Defendants have
5 failed to provide disabled accessible guestrooms and amenities that are offered to
6 able-bodied persons, and have not made the Restaurant accessible to and safe to use
7 by persons with disabilities, despite Defendants’ obligations under Title III of the
8 ADA to make their facilities accessible to and useable by persons with disabilities
9 and that they provide their goods, services, and accommodations in a non-
10 discriminatory manner to Plaintiffs and other disabled persons. As a result, Plaintiffs
11 have been excluded and denied the benefits and privileges offered by Defendants at
12 these lovely facilities and have suffered damages. Plaintiffs seek an injunction to
13 require Defendants to remove physical barriers excluding disabled persons from their
14 facilities and modify their policies, practices and procedures to ensure that the Lodge,
15 the Restaurant, and its related facilities, including parking and exterior and interior
16 paths of travel be accessible to and usable by physically disabled persons, as required
17 by law. Plaintiffs are deterred, excluded and denied the benefits and privileges of
18 these public accommodations, and cannot safely use the public facilities at the Lodge
19 and Restaurant until such time as Defendants make their public accommodations and
20 facilities readily accessible to and usable by Plaintiffs and other similarly disabled
21 persons.

22 **JURISDICTION AND VENUE:**

23 5. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331
24 for violations of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 *et*
25 *seq.*

26 6. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is
27 founded on the fact that the real property which is the subject of this action is located
28 in Hawaii and that Plaintiffs’ causes of action arose in Hawaii.

**FIRST CAUSE OF ACTION:
VIOLATION OF THE AMERICANS WITH DISABILITIES
ACT OF 1990
42 USC § 12101, *et seq.***

7. Plaintiffs replead and incorporate by reference, as if fully set forth again herein, the allegations contained in Paragraphs 1 through 6 of this Complaint, and incorporate them herein as if separately replied.

8. Defendants are the owners, operators, lessors, and/or lessees of the Kula Lodge and Restaurant. Plaintiffs are informed and believe that each of the named Defendants herein, including KULA LODGE AND RESTAURANT; KULA LODGE AND RESTUARANT, INC.; FRED ROMANCHAK and DOES 1 through 10, inclusive, are the agent, ostensible agent, alter ego, master, servant, trustor, trustee, employer, employee, representative, franchiser, franchisee, lessor, lessee, joint venturer, parent, subsidiary, affiliate, related entity, partner, and/or associate, or such similar capacity, of each of the other Defendants, and was at all times acting and performing, or failing to act or perform, within the course and scope of such similar aforementioned capacities, and with the authorization, consent, permission and/or ratification of each of the other Defendants, and is personally responsible in some manner for the acts and omissions of the other Defendants in proximately causing the violations and damages complained of herein, and have participated, directed, and have ostensibly and/or directly approved and/or ratified each of the acts or omissions of each other Defendant, as herein described. Plaintiffs will seek leave to amend when the true names, capacities, connections, and responsibilities of Defendants are ascertained. References to "Defendants" unless otherwise specified, shall be deemed to refer to all Defendants and each of them.

9. Plaintiff Skaff is a "person with a disability" or "physically handicapped person." (Hereinafter, the words "physically handicapped" and "physically disabled" are used interchangeably as these words have similar or identical common usage and legal meaning.) He is a paraplegic as the result of an accident and a disabled activist

1 who has spent most of his adult life working to eliminate discrimination against
2 persons with disabilities including: working for the San Francisco Mayor's Office on
3 disability, volunteering hundreds of hours to work with disability groups promoting
4 accessible legislation and working with state and federal boards and commissions
5 regulating and interpreting access codes and regulations. Currently, Skaff is
6 Executive Director of Designing Accessible Communities, a non-profit educational
7 organization working with businesses and disability communities to promote
8 accessible facilities in place of public accommodations. Skaff is also a regular visitor
9 to Maui to see friends, family and for relaxation and health benefits, and wishes to
10 visit and enjoy the goods, services and amenities offered by Defendants at the Lodge
11 and Restaurant with friends and family. Skaff seeks to live his life fully and model
12 independence as part of mainstream society without being deterred by unlawful
13 access barriers in public accommodations, and therefore he seeks to enforce his rights
14 to readily accessible facilities at the Kula Lodge and Restaurant for the benefit of
15 himself and others similarly disabled persons.

16 10. Plaintiff Michaud is a "person with a disability" or "physically
17 handicapped person." Plaintiff lives on Maui and wants to use the Restaurant and its
18 amenities with friends and family, and seeks to live her life fully and model
19 independence as part of mainstream society without being deterred by unlawful
20 access barriers in public accommodations, and therefore she seeks to enforce her
21 rights to readily accessible facilities at the Kula Lodge and Restaurant for the benefit
22 of herself and others similarly disabled.

23 11. In 1990, the United States Congress found that laws were needed to
24 more fully protect "some 43 million Americans with one or more physical or mental
25 disabilities; that historically society has tended to isolate and segregate individuals
26 with disabilities" and that "such forms of discrimination against individuals with
27 disabilities continue to be a serious and pervasive social problem; that the nation's
28 proper goals regarding individuals with disabilities are to assure equality of

1 opportunity, full participation, independent living and economic self-sufficiency for
2 such individuals; and that the continuing existence of unfair and unnecessary
3 discrimination and prejudice denies people with disabilities the opportunity to
4 compete on an equal basis and to pursue those opportunities for which our free
5 society is justifiably famous.” [42 U.S.C. § 12101.]

6 12. Congress stated as its purpose in passing the Americans with Disabilities
7 Act (42 U.S.C. § 12101(b))

8 It is the purpose of this act:

9 (1) to provide a clear and comprehensive national mandate
10 for the elimination of discrimination against individuals with
11 disabilities;

12 (2) to provide clear, strong, consistent, enforceable standards
13 addressing discrimination against individuals with
14 disabilities;

15 (3) to ensure that the Federal government plays a central role
16 in enforcing the standards established in this act on behalf of
17 individuals with disabilities; and

18 (4) to invoke the sweep of Congressional authority, including
19 the power to enforce the 14th Amendment and to regulate
20 commerce, in order to address the major areas of
21 discrimination faced day to day by people with disabilities.”

22 (Emphasis added.)

23 13. As part of the ADA, Congress passed “Title III - Public
24 Accommodations and Services Operated by Private Entities” (42 U.S.C. § 12181, *et*
25 *seq.*). Among “private entities” which are considered “public accommodations” for
26 purposes of this title are “an inn, hotel, motel, or other place of lodging” and “a
27 restaurant, bar, or other establishment serving food or drink”. [42 U.S.C.
28 §12182(7)(A)&(B).]

1 14. Pursuant to 42 U.S.C. § 12182: “No individual shall be discriminated
2 against on the basis of disability in the full and equal enjoyment of the goods,
3 services, facilities, privileges, advantages, or accommodations of any place of public
4 accommodation by any person who owns, leases, or leases to, or operates a place of
5 public accommodation.”

6 15. Among the specific prohibitions against discrimination were included:
7 § 302(b)(2)(A)(ii): “A failure to make reasonable modifications in policies, practices
8 or procedures when such modifications are necessary to afford such goods, services,
9 facilities, privileges, advantages or accommodations to individuals with
10 disabilities...;”

11 § 302(b)(2)(A)(iii): “A failure to take such steps as may be necessary to ensure that
12 no individual with a disability is excluded, denied services, segregated, or otherwise
13 treated differently than other individuals because of the absence of auxiliary aids and
14 services...;”

15 § 302(b)(2)(A)(iv): “A failure to remove architectural barriers, and communication
16 barriers that are structural in nature, in existing facilities... where such removal is
17 readily achievable;”

18 § 302(b)(2)(A)(v): “Where an entity can demonstrate that the removal of a barrier
19 under clause (iv) is not readily achievable, a failure to make such goods, services,
20 facilities, privileges, advantages, or accommodations available through alternative
21 methods if such methods are readily achievable.”

22 16. The acts and omissions of Defendants set forth herein were in violation
23 of Plaintiffs’ rights under Title III of the ADA and the regulations promulgated under
24 28 C.F.R. Part 36, *et seq.*

25 17. On information and belief, Defendants designed, constructed,
26 significantly altered and/or added to the Lodge facilities since January 26, 1992, with
27 access barriers in violation of 42 U.S.C. § 12183(a)(1), and the Department of Justice
28 regulations enacted to enforce Title III protections. Further, the removal of each of

1 the barriers complained of by Plaintiffs, as herein alleged, was at all times mentioned
2 "readily achievable" under the standards of Section 309 of the ADA, as a continuing
3 obligation since January 26, 1992. Further, on information and belief, Defendants
4 have, since January 26, 1992, performed alterations and/or additions, including
5 alterations to areas of primary function, which, because of the failure to provide
6 access, violate Section 303(a)(2) of the ADA, and the regulations promulgated
7 thereunder; 28 CFR Part 36, including an outdoor addition to the Restaurant that is
8 situated on a series of inaccessible tiers. On information and belief, the construction
9 of this large addition would have triggered an accessible entrance to the Restaurant, a
10 path of travel from the parking, accessible restrooms serving the newly constructed
11 areas, and an interior path of travel to the new addition. Within the last year of the
12 filing of this complaint, Plaintiffs have been denied full and equal access to the
13 subject premises, and continue to be denied the benefits, privileges and
14 accommodations offered to able-bodied guests on the basis of their disabilities, which
15 violates Plaintiffs' rights under the ADA, and discriminates against Plaintiffs, thus
16 wrongfully denying to Plaintiffs the full and equal enjoyment of the goods, services,
17 facilities, privileges, advantages and accommodations, in violation of Title III of the
18 ADA. [42 U.S.C. § 12182.]

19 18. On information and belief, Defendants have also failed to modify their
20 policies and procedures to provide disabled guests with the special amenities and
21 services that Defendants offer to the general public, including access to their food,
22 entertainment and outdoor facilities.

23 19. Pursuant to Title III of the ADA [§ 308], Plaintiffs are entitled to the
24 remedies and procedures set forth in the Civil Rights Act of 1964, § 204(a) [42 USC
25 § 2000(a)-3(a)], as Plaintiffs are being subjected to discrimination on the basis of
26 disability in violation of this title. On information and belief, Defendants continue to
27 violate the law and deny Plaintiffs' rights and that of other disabled persons to access
28 at this public accommodation for at least the last year prior to the filing of this

1 complaint. Pursuant to §308(a)(2): “In cases of violations of §303(a) . . . injunctive
 2 relief shall include an order to alter facilities to make such facilities readily accessible
 3 to and usable by individuals with disabilities to the extent required by this title . . .
 4 injunctive relief shall also require the provision of an auxiliary aid or service,
 5 modification of a policy or provision of alternative methods, to the extent required by
 6 this title.”

7 20. Plaintiffs seek relief pursuant to remedies set forth in the Civil Rights
 8 Act of 1964, §204(a) (42 U.S.C. § 2000(a)-3(a), and pursuant to Federal Regulations
 9 adopted to implement the ADA, including but not limited to an order granting
 10 injunctive relief and attorneys’ fees, litigation expenses and costs pursuant to 42
 11 U.S.C. § 12205 [§505]. Plaintiffs are qualified individuals for purposes of Section
 12 308(a) of the ADA who are being subjected to discrimination on the basis of
 13 disability in violation of Title III and who have reasonable grounds for believing they
 14 will be subjected to such discrimination each time that they may attempt to use the
 15 Lodge and its related public accommodations.

FACTS OF THE CASE

17 21. Plaintiff Skaff has traveled to Maui to visit family and for health and
 18 relaxation for many years, and intends to continue to visit Maui regularly in the
 19 future, with eventual plans of moving to Maui with his wife. Plaintiff Michaud is a
 20 long time resident of Maui.

21 22. When Plaintiff Skaff asked about an accessible guestroom in the Lodge,
 22 he was informed that there were no accessible guestrooms. When he sought to eat at
 23 the Restaurant he found that he could not safely enter the Restaurant due to barriers in
 24 the path of travel, including a very steep and dangerous ramp from the parking to the
 25 Restaurant’s entrance. Had Skaff entered the Restaurant he would have found that
 26 the restrooms were wholly inaccessible and he would not have been able to enter
 27 stalls or use the toilets. Additionally, he would not have been able to eat outside in
 28 the recent addition to the Restaurant, as he could not reach the tables in the tiered

1 seating areas. Such barriers include but are not limited to: parking for the Restaurant
2 that was not properly signed, configured or located for accessibility, and without an
3 accessible path of travel to the entrance; limited access to the Lodge, and no
4 accessible guestrooms available for him to use; dangerous and unusable ramp from
5 the lower parking to the entrance to the Restaurant or the Lodge; inaccessible public
6 restrooms, and inaccessible paths of travel throughout the Kula Lodge Farmer's
7 Market.

8 23. On information and belief, the Lodge does not offer the following: fully
9 accessible guestrooms as required under the ADA, which should be provided in the
10 number required, accessible public restrooms, or accessible parking for any facility
11 other than the Store because of the lack of path of travel from the lower parking to the
12 Restaurant or the Lodge. Neither Plaintiff is able to access or safely use these unique
13 public accommodations until the dangerous and inaccessible facilities are made
14 readily accessible to and usable by persons with disabilities.

15 24. Plaintiffs are deterred from returning and safely using the facilities at the
16 Lodge due to the continuing lack of disabled access. Plaintiffs cannot return without
17 facing continuing discrimination in the multiple respects set forth in this Complaint
18 until Defendants make the Lodge and all of its amenities fully accessible to persons
19 with disabilities.

20 25. Request for Injunctive Relief: The acts and omissions of Defendants as
21 complained of herein continue to have the effect of wrongfully excluding Plaintiffs
22 and other members of the public who are physically disabled, including wheelchair
23 users, from full and equal access to that public accommodation known as the Kula
24 Lodge and Restaurant. Such acts and omissions are the cause of fear, humiliation and
25 mental and emotional suffering of Plaintiffs in that these actions continue to treat
26 Plaintiffs as inferior and second class citizens and serve to discriminate against them
27 on the sole basis that they are persons with disabilities who require the use of a
28 wheelchair for mobility in public places. Plaintiffs are unable, so long as such acts

1 and omissions of Defendants continue, to achieve equal access to and use of this
2 public accommodation. The acts of Defendants have proximately caused and will
3 continue to cause irreparable injury to Plaintiffs if not enjoined by this Court.

4 Wherefore Plaintiffs pray for damages and injunctive relief as hereinafter
5 stated.

6 **SECOND CAUSE OF ACTION:**

7 **VIOLATION OF HAWAII CIVIL CODE § 489-3**

8 26. Plaintiffs replead and incorporate by reference, as if fully set forth again
9 herein, the allegations contained in Paragraphs 1 through 25 of this Complaint, and
10 incorporate them herein as if separately replied.

11 27. Any person who is injured by an unlawful discriminatory practice, may
12 sue for damages sustained. Plaintiffs, under H.R.S. § 489.75 shall be awarded a sum
13 not less than \$1,000 or threefold the actual damages sustained by Plaintiffs,
14 whichever is greater, as well as reasonable attorneys' fees and costs.

15 28. On information and belief, Plaintiffs have been damaged by Defendants'
16 unlawful discriminatory practices that have denied and continue to deny them the
17 goods, services, privileges and accommodations offered to the general public at the
18 Kula Lodge and Restaurant.

19 29. Request for Damages: The acts and/or omissions of Defendants as
20 complained of herein continue to have the effect of wrongfully excluding Plaintiffs
21 and other members of the public who are physically disabled, including wheelchair
22 users, from full and equal access to the Kula Lodge and Restaurant. Such acts and
23 omissions are the cause of humiliation and mental and emotional suffering of
24 Plaintiffs in that these actions continue to treat Plaintiffs as inferior and second class
25 citizens and serve to discriminate against them on the sole basis that they are persons
26 with disabilities who require the use of wheelchairs for mobility in public places.
27 Plaintiffs request damages for this continuing violation of their civil rights.

28 ///

30. As a result of Defendants' acts and omissions in this regard, Plaintiffs have been required to incur legal expenses and attorneys' fees, as provided by Hawaii law, in order to enforce Plaintiffs' rights and to enforce provisions of the laws protecting access for disabled persons and prohibiting discrimination against disabled persons. Plaintiffs therefore seek recovery of all reasonable attorneys' fees and costs pursuant to the provisions of Hawaii law.

Wherefore Plaintiffs pray for damages and injunctive relief as hereinafter stated.

PRAYER

FIRST CAUSE OF ACTION

1. For injunctive relief under the Americans with Disabilities Act of 1990, including ordering Defendants “to alter the facilities to make such facilities readily accessible to and usable by individuals with disabilities,” and to modify policies as required pursuant to Title III of the ADA, § 308 [42 U.S.C. § 12188];

2. For attorneys' fees, litigation expenses and costs of suit, pursuant to Title III of the ADA, § 505 [42 U.S.C § 12205], and attendant regulations;

3. For such other and further relief as the Court may deem proper.

SECOND CAUSE OF ACTION

4. For damages, injunctive relief, attorneys' fees and costs pursuant to H.R.S. § 489-7.5; and

5. For such other and further relief as the Court may deem proper.

Dated: July 13, 2010

DIEHL & WEGER

By:

RICHARD DIEHL, Esq.

Atorneys for Plaintiffs, KAREN MICHAUD
and RICHARD SKAFF

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